

Application No.: 09/980,880
Petition Dated: June 12, 2009
Reply to Advisory Action: June 8, 2009

MAT-8189US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No: 09/980,880
Applicants: Yoshio GODA, et al.
Filed: September 3, 2002
Title: TOP SEALING PLATE, BATTERY USING THE TOP
SEALING PLATE, AND METHOD OF MANUFACTURING
THE BATTERY (AS AMENDED)
TC/A.U.: 1795
Examiner: Robert W. Hodge
Confirmation No.: 1394
Docket No.: MAT-8189US

PETITION TO THE DIRECTOR UNDER 37 C.F.R. 51.181
REGARDING REFUSAL TO ENTER REPLY BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Petition is being filed because the Examiner has refused to enter a Reply Brief which was filed on **March 20, 2009**. The Examiner's refusal to enter the Reply Brief is improper. The Director is respectfully requested to enter the Reply Brief.

On **June 8, 2009**, the USPTO mailed an Advisory Action after the filing of an Appeal Brief regarding the above-identified application. In the Advisory Action, the Examiner refused to enter Applicants' Reply Brief on the following basis:

The reply filed after the filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because the claims contain subject matter that was not entered after final with the advisory action mailed 12/14/05.

Applicants' representative disagrees with the above statement. The statement is improper for several reasons:

1. The Examiner argues that "the claims contain subject matter that was not entered." Applicants do not understand this statement. What does it mean that the claims contain subject matter that was not entered? If the subject matter was not entered, then the subject matter is not included in the claims. The Examiner's statement is not understood.

2. The Advisory Action states "the reply ... will not be entered." What reply is the Examiner referring to? The only "reply" in the Image File Wrapper is a Reply Brief which was properly filed under 37 C.F.R. 41.41. The Examiner's refusal to enter a "reply" is not understood.

3. The Advisory Action states "the reply ... will not be entered because the claims contain subject matter ..." As the only "reply" filed after the filing of an Appeal Brief is a Reply Brief, an Examiner cannot refuse to enter a Reply Brief on the basis of the content of claims. Title 37 of the C.F.R. provides specific reasons that the USPTO may rely on to refuse to enter a Reply Brief. The contents of the claims are not a proper basis for refusing to enter a Reply Brief.

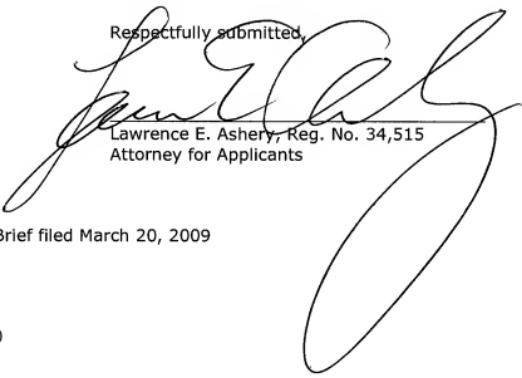
4. Applicants' representative has speculated that perhaps the Examiner is referring to the claims that appeared in Applicants' Appeal Brief. Those claims, however, do not reflect any unentered Amendment. Furthermore, in their Appeal Brief, Applicants included a correct statement regarding the status of the claims and the contents of the claims that are on appeal.

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For the above reasons, it is respectfully requested that Applicants' Reply Brief be entered (or that the entry of that Reply Brief be affirmed).

Respectfully submitted,


Lawrence E. Ashery, Reg. No. 34,515
Attorney for Applicants

LEA/fp

Attachment: Copy of Reply Brief filed March 20, 2009

Dated: June 12, 2009

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The Commissioner for Patents is hereby
authorized to charge payment to Deposit
Account No. 18-0350 of any fees associated
with this communication.

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REPLY BRIEF UNDER 37 CFR 41.41

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer of **January 27, 2009**, Appellants are submitting this Reply Brief for the above-identified application.

Page 5 of the Examiner's Answer indicates that the Examiner considered the claim limitation "a contact pressure of said first contact portion is stronger than a contact pressure of said second contact portion" to have little or no patentable weight because it does not limit the structure of the apparatus. On page 8 of the Appeal Brief, however, Appellants argued that this rejection was improper because the Office Actions provided no reason or explanation supporting the assertion that the claim limitation does not limit the structure.

Page 5 of the Examiner's Answer indicates that "any sealant has infinite contact portions and because of the chemical nature of all sealants it is inherent that there will be weak and strong contact portions." On page 13 of the Appeal Brief, however, Appellants noted that this statement misinterprets the claims because the first contact portion is not formed by the caulk, but instead by the contact of a projection with a bend portion.

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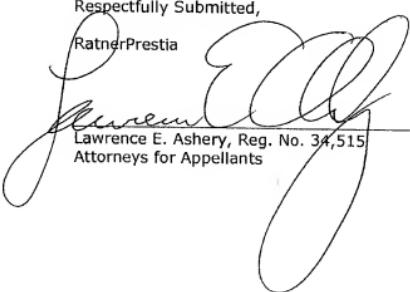
Page 5 of the Examiner's Answer indicates that claim 1 does not recite "where specifically the first and second contact portions are located with respect to each other." However, Appellants' claim 1 does recite "said first contact portion is formed from a contact of said projection and said bend portion." Further, Appellants Figure 1(b) depicts the contact portions between the outer periphery of the flange and the bend portion.

Page 6 of the Examiner's Answer indicates that the Examiner relied on the teaching of Nishino that a protrusion in the flange portion of the battery cap will improve fluid leakage resistance. On pages 11-12 of the Appeal Brief, Appellants argue that Nishino teaches that both a protrusion and a gasket are required to obtain improved leakage resistance. Appellants further argued that the inclusion of a gasket in the combination of the Nishino and Onagawa references would not meet Appellants' claims because it would not contain a first contact portion "formed from a contact of said projection and said bend portion."

Page 7 of the Examiner's Answer indicates that "the invention of Onagawa as modified by Nishino will also inherently have a strong contact portion formed around the protrusion." On page 13 of the Appeal Brief, Appellants argued that neither reference discloses a first contact pressure formed from a first contact portion of a projection and a bend portion that is stronger than a second contact pressure formed by a second contact portion.

Respectfully Submitted,

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Dated: March 20, 2009

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